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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/755,218	01/12/2004	Jeffrey Berichon	78297/00001	1889
23380 7590 02/04/2010 TUCKER ELLIS & WEST LLP 1150 HUNTINGTON BUILDING 925 EUCLID AVENUE CLEVELAND, OH 44115-1414				
EXAMINER				
ROJAS, HAJIME S				
ART UNIT		PAPER NUMBER		
3627				
NOTIFICATION DATE		DELIVERY MODE		
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patents@tuckerellis.com

Office Action Summary

Application No.

10/755,218

Applicant(s)

BERICHON ET AL.

Examiner

HAJIME ROJAS

Art Unit

3627

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 November 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-44 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-44 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 November 2009 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/GS/US)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date _____

DETAILED ACTION

The following is a Final Office action in response to communications received November 06, 2009.

Claims 1-44 are pending and addressed below.

Drawings

The drawings submitted on November 06, 2009 are accepted.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-44 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement.

The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claim 1 includes the limitation "grouping a set of items associated with first and second shippers prior to delivery as a pooled group of items, and routing of transport of the set

of items associated with the first and second shippers by a pool distributor of the associated pooled transport distribution system".

Examiner reviewed the original specification in its entirety and was unable to find support for this new limitation of grouping items associated with different shippers before delivering them as a pooled group and routing sets of items associated with different shippers by a pool distributor. Examiner also notes that the Specification of the present application discloses two points where the present invention can be used: distribution center direct shipment and pool distribution shipment (Specification submitted January 12, 2004 page 9 lines 32- page 10, line 12). Further, the distribution center direct shipment as disclosed in the specification includes the modes as claimed (page 11, lines 20-22), however, the pool distribution shipment seems to lack these specifics. It appears the claims as presently written combine these two separate embodiments. Therefore, Examiner respectfully submits that Applicant was not in possession of the claimed invention at the time of the filing date.

Independent claims 11, 21 and 31 recite similar limitations and are also rejected for the reasons mentioned above.

Dependent claims 2-10, 12-20, 22-30, 32-44 depend from claims 1, 11, 21 and 31 and do not cure the deficiencies set forth above.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Waddington et al. (US 2002/0010661, hereinafter Waddington) as evidenced by Broussard et al. (US 2004/0138921) in view of Or-Bach et al. (US 6,988,079, hereinafter Or-Bach).

As per claim 11, Waddington discloses a method for managing items in a supply chain comprising: capturing item identification information associated with a plurality of items associated with a plurality of unique shipper sources and delivery destinations into a computer inclusive of a processor and data storage, each of the plurality of items being identified for supply chain management ([paragraph][0085], wherein information about an item which is part of a distribution chain is scanned using a delivery device. See also [0079], several distribution centers and Figure 1, plurality of retail stores and [0097], cross-dock. See also [0077], wherein items are associated with a plurality of unique shipper sources, manufacturer and [0146], wherein items that are part of delivery orders to different delivery destinations scanned at step 322 are associated with UPC/NDC codes which are related to specific and unique distributors as evidenced by Broussard [0005], "The NDC is a 10-digit number typically containing three (3) segments or fields: the manufacturer or distributor code field...").

Waddington does not explicitly disclose in connection with an associated pooled transport distribution system. However, Waddington discloses a distribution center

along with a plurality of retail store destinations (Figure 1) including consolidating orders to be distributed to the retail destinations where the orders include items from different sources (Figure 43 and Figure 58a, item details of different items including different UPC/NDC) and Or-Bach teaches a system where goods from different sources are sent to a central location, pool distribution location, where they will be collected and sent to a subsequent destination ([column:line][8:51-64]) Or-Bach also teaches a plurality of sources, and associating these with their respective items ([9:52-63]) which will be delivered to the central location and eventually to their final destination (Figure 1).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the invention as disclosed by Waddington and make use of the distribution system as disclosed by Waddington as the central location as taught by Or-Bach in order to fully utilize transportation and shipment resources.

Waddington further discloses receiving first user input corresponding to a user-selected consolidation mode relative to consolidation by grouping a set of items associated with first and second shippers prior to delivery as a pooled group of items, and routing of transport of the set of items associated with the first and second shippers by a pool distributor of the associated pooled transport distribution system; (Figure 7 and [0089], user selected pallet mode relative to consolidation, multiple containers consolidated in a pallet and routing, which is consistent with the "consolidation" of the present application page 12, lines 23-28); receiving second user input corresponding to each of the plurality of sources (Waddington [0147], wherein quantities corresponding to each of source, UPC/NDC, is entered), each received second user input being representative of a

selection of at least one of a plurality of capturing modes, wherein each capturing mode is adapted for creating associated information by associating the captured item identification information with supply chain information in accordance with one of the plurality of sources corresponding thereto (Figure 39, PO Direct Entry mode under the Order Creating mode Figure 36); communicating the associated information to the data storage for storage in accordance with one of the plurality of sources corresponding thereto (Figure 27, transmit order, which includes information corresponding to sources, to distribution center); commencing distribution of each item of the set of items of the pooled group by the pool distributor of the associated pooled transport distribution system to its associated destination in accordance with the consolidation and routing specified by the user-selected consolidation mode corresponding thereto ([0085], operations performed for the delivery of items in accordance with routing specified, the routing being specified by being chosen. See also [0011]).

As per claim 12, Waddington further discloses wherein the receiving the second user input includes receiving second user input, each second user input being representative of a selection of at least one of a plurality of capturing modes including at least one of a consolidation stage, a grid area stage, a loading vehicle stage, a delivery stage and/or a pick up stage ([0088], "Pre Load", "Route Select", "Manifest". See also Figure 4).

As per claim 13, Waddington further discloses wherein the consolidation stage mode is adapted for associating the captured item information with supply chain information

comprising at least one of a pallet identification with which the item has been associated, a time of capture information, a date of capture information or item classification information ([0089], "Route Select", pallet mode. See also [0090], date and time of deliveries. See also [0096], wherein containers are classified as full or half).

As per claim 14, Waddington further discloses wherein the grid area stage mode is adapted for associating the captured item information with supply chain information comprising at least one of a grid identification with which the item has been associated, a time of capture information or a date of capture information ([0081] and [0083], wherein a barcode associated with a location in a warehouse is scanned and forms part of the item unique identifier which is again scanned on "PreLoad" [0087]. See also [0090], date and time of deliveries).

As per claim 15, Waddington further discloses wherein the loading vehicle stage mode is adapted for associating the captured item information with supply chain information comprising at least one of a vehicle identification, wherein the vehicle has been identified for transporting the item, a time of capture information, a date of capture information, and a delivery destination ([0089], "Route Select", Truck number. See also [0090], date and time of deliveries and [0091], delivery stops).

As per claim 16, Waddington further discloses wherein the delivery stage mode is adapted for associating the captured item information with supply chain information

comprising at least one of a time of capture information, a date of capture information, item damage information or item refusal information ([0099], "Manifest", items flagged as refused. See also Figure 53, wherein the user can choose "Unsalable Rcvd Damaged").

As per claim 17, Waddington further discloses wherein the pick up stage mode is adapted for associating the captured item information with supply chain information comprising at least one of a time of capture information, a date of capture information, an item recipient identity, item damage information or item refusal information ([0099], "Manifest" includes date and time, items flagged as refused and [0110], receiving agent's name. See also Figure 53, wherein the user can choose "Unsalable Rcvd Damaged").

As per claim 18, Waddington further discloses wherein the communicating means comprises at least one of a physical connection to the data storage device, a wireless connection to the data storage device, a Bluetooth™ connection to the data storage device or a 802.11 connection to the storage device ([0086], delivery device wirelessly communicates with distribution center computer).

As per claim 19, Waddington further discloses wherein the data storage device is adapted to be accessed through an Internet connection ([0079], orders to distribution

center computer received through internet. See also [0119], distribution center computer accessed through internet).

As per claim 20, Waddington further discloses wherein the data storage device comprises means adapted for formatting the associated information in accordance with an input user request ([0079], orders received by mail are entered into the distribution center computer. See also [0086], wherein information about deliveries is uploaded to the distribution center computer).

As per claim 42, Waddington further discloses associating a first set of items of the pooled group of items with the first shipper in accordance with the item identification information; associating a second set of items of the pooled group of items with the second shipper in accordance with the item identification information; and commencing distribution by the pool distributor of the first set of items of the first shipper together with the second set of items of the second shipper on a single route specified by the user-selected consolidation mode (Figures 43 and 58a item details related to different sources as shown by the different UPC/NDC, Figure 27 a order creating method, which includes inputting items to be included in one order and [0080], aggregating items, which would include items coming from different sources, into a shipping container to be sent to one of the retail stores).

As per claims 1-10 and 21-41, 43-44, claims 1-10 and 21-41, 43-44 recite substantially similar limitations to claim 11-20 and 42 and are therefore rejected using the same art and rational set forth above.

Please Note: A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

Response to Arguments

Applicant's arguments with respect to claim 1 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to HAJIME ROJAS whose telephone number is (571)270-5491. The examiner can normally be reached on EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Florian Zeender can be reached on (571)272-6790. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

**/HAJIME ROJAS/
Examiner, Art Unit 3627**

**/F. Ryan Zeender/
Supervisory Patent Examiner, Art Unit 3627**